

## HB0083S01 compared with HB0083

~~{deleted text}~~ shows text that was in HB0083 but was deleted in HB0083S01.

Inserted text shows text that was not in HB0083 but was inserted into HB0083S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Marc K. Roberts proposes the following substitute bill:

### FORCIBLE ENTRY AND WARRANTS AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Marc K. Roberts**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies provisions related to entry of ~~{peace}~~ officers to conduct search or make arrest.

##### Highlighted Provisions:

This bill:

- ▶ ~~{addresses firearms in private residences}~~ requires supervisory officials to conduct reviews;
- ▶ requires certain information in affidavits requesting specific warrants;
- ▶ ~~{limits}~~ addresses when ~~{forcible}~~ forceable entry may or may not be used; and
- ▶ makes technical changes.

##### Money Appropriated in this Bill:

None

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### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

77-7-8, as last amended by Laws of Utah 2015, Chapter 317

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section 77-7-8 is amended to read:

**77-7-8. Forcible entry to conduct search or make arrest -- Conditions requiring a warrant.**

(1) As used in this section:

(a) "Daytime hours" and "nighttime hours" mean the same as those terms are described in Subsection 77-7-5(3).

(b) "Supervisory official" means a county sheriff or chief deputy sheriff, a police chief or assistant police chief, the officer in charge of an investigative task force or the assistant officer in charge, or the attorney general or an assistant attorney general.

~~[(1)]~~ (2) (a) Subject to ~~[Subsection (2), a peace]~~ the other provisions of this section, a ~~peace~~ an officer when making an arrest may forcibly enter the building in which the person to be arrested is located, or in which there is probable cause for believing the person to be.

(b) Before making the forcible entry, the ~~{peace}~~ officer shall:

(i) identify himself or herself as ~~[a {} law {} peace] enforcement~~ an officer;

(ii) demand admission;

(iii) wait a reasonable period of time for an occupant to admit access; and

(iv) explain the purpose for which admission is desired.

(c) (i) The ~~{peace}~~ officer need not give a demand and explanation, or identify himself or herself, before making a forcible entry under the exceptions in Section 77-7-6 or ~~[where]~~ when there is probable cause to believe evidence will be easily or quickly destroyed.

(ii) The ~~{peace}~~ officer shall identify himself or herself and state the purpose for entering the premises as soon as practicable after entering the premises.

(d) The ~~{peace}~~ officer may use only that force ~~[which]~~ that is reasonable and necessary to effectuate forcible entry under this section.

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~~[(2)]~~ (3) [If] Subject to ~~{Subsection}~~ Subsections (4) and (5), if the building to be entered under Subsection ~~[(1)]~~ (2) appears to be a private residence or the ~~{peace}~~ officer knows the building is a private residence, and if there is no consent to enter or there are no exigent circumstances, the ~~{}~~ {peace} officer shall, before entering the building:

(a) obtain an arrest or search warrant if the building is the residence of the person to be arrested; or

(b) obtain a search warrant if the building is a residence, but not the residence of the person whose arrest is sought.

~~(3) The presence of a firearm within a private residence, in the absence of other information suggesting that the firearm might be used against a peace officer executing a warrant, is not relevant in determining whether forcible entry may be authorized.~~

~~— (4) A~~ (4) Before seeking a warrant from a judge or magistrate ~~{ issuing a warrant}~~ pursuant to Subsection ~~(2) shall ensure that the~~ (3), a supervisory official shall, using the officer's affidavit and other relevant information, independently perform a risk assessment to evaluate the totality of the circumstances and ensure reasonable intelligence gathering efforts have been made.

(5) (a) The affidavit for ~~{the warrant:~~

~~— (a) explains why a peace officer is unable to detain the suspect or search the residence}~~ a warrant seeking forcible entry shall describe:

(i) why the officer believes the suspect is unable to be detained, or the residence searched, using less invasive or less confrontational methods;

~~— (b) explains why the warrant cannot be executed during daytime, which is the hours beginning at 6 a.m. and ending at 10 p.m. local time, if the warrant is to be executed at night;~~

and

~~{c} describes:~~

~~— (i) ii) investigative activities that have been~~ {, or will be,} undertaken ~~{ before execution of the warrant}~~ to ensure that the correct building is identified and that potential harm to innocent third parties, the building, and ~~{peace}~~ officers may be minimized ~~{, or}.~~

~~{ii} b) {why no investigative activities are needed.~~

~~— (3) (5)~~ Notwithstanding Subsection 77-7-5(2)(a), and pursuant to Rule 40 of the Utah Rules of Criminal Procedure, a warrant shall be served during daytime hours unless the

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affidavit states sufficient grounds to believe a search is necessary during nighttime hours.

~~[(3)]~~ (6) (a) Notwithstanding any other provision of this chapter, forcible entry under this section may not be made solely for the alleged:

~~[(a)]~~ (i) possession or use of a controlled substance under Section 58-37-8, with or without the intent to distribute; or

~~[(b)]~~ ~~{ }~~ (ii) possession of drug paraphernalia as defined in Section 58-37a-3.

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### Legislative Review Note

~~Office of Legislative Research and General Counsel~~ (b) Forcible entry may be made for distribution of a controlled substance.